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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/827,551 | 04/19/2004 | Valery H. Vanstaen | 14494 | 3439 |

7590 06/28/2005

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EXAMINER

DURAND, PAUL R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3721

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|--------------------------------|--|
| Office Action Summary | Application No. 10/827,551 | Applicant(s) VANSTAAN ET AL | |
| | Examiner Paul Durand | Art Unit 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>04/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Marraffino (US 3,610,481).

In regard to claims 1 and 5, Marraffino discloses the invention as claimed including an aerosol dispenser comprised of housing 10, with an open end and a closure 14, functioning as a clamp ring, valve stem 20, in operational relationship with the open end, which reciprocates from an open, retracted position to a closed extended position, fuel metering valve 12, located within the housing, fuel metering chamber 28, which allows a pre measured amount of product, with a second container, with an end of the valve body located in the second container (see Figs. 1-4 and C1,L32 – C2,L69).

In regard to claims 2 and 6, Marraffino discloses the invention as claimed including valve stem 20, with an enlarged portion (no number given, but generally indicated by reference number 21 in figure 4), and lip seal 32 (see Figs. 1 and 4).

In regard to claim 3, Marraffino discloses the invention as claimed including a first end of valve body 12 engaging closure (see Fig. 1).

In regard to claim 4, Marraffino discloses the invention as claimed including metering chamber 28, having a seals 32 and 33 (see Fig. 1).

In regard to claim 9, metering chamber 28, which surrounds valve stem with a first end engaging seal 33 and second end, with an enlarged portion (no number given, but generally indicated by reference number 21 in figure 4), engaging a second seal (see Figs. 1-4 and C1,L32 – C2,L69).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marraffino in view of Stoodly (US 4,431,119).

5. Marraffino discloses the invention substantially as claimed except for the use of a biasing element to bias the valve stem in the closed position. However, Stoodly teaches that it is old and well known in the art to provide biasing spring 73 located between the valve stem 37 and metering chamber 47, which biases a radial portion 43 against a seal 65 in the closed position for the purpose of preventing leakage of contents when not being used (see Figs. 6-8). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the

invention of Marraffino with the biasing means as taught by Stoody for the purpose of preventing leakage of contents.

6. Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marraffino in view of Tsutsui (US 6,202,900).

In regard to claims 11,12,15 and 16, Marraffino discloses the invention substantially as claimed including an aerosol dispenser comprised of housing 10, with an open end and a closure 14, valve stem 20, in operational relationship with the open end, which reciprocates from an open, retracted position to a closed extended position, fuel metering valve 12, located within the housing, fuel metering chamber 28, which allows a pre measured amount of product, with a second container, with an end of the valve body located in the second container (see Figs. 1-4 and C1,L32 – C2,L69). What Marraffino does not disclose is the use of an aerosol container, which can be refilled. However, Tsutsui teaches that it is old and well known in the art to provide an aerosol container 11, with a valve stem 13, valve body 12 and metering chamber 21, which is refillable, when the valve stem is retracted past the open position, with the valve stem in the closed position, when it is fully extended for the purpose of refilling a container with product. (see Figs. 1-3 and C4,L57 – C8,L16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Marraffino with the filling means as taught by Tsutsui for the purpose of refilling a container with product.

In regard to claims 10,13 and 17, the modified invention of Marraffino discloses the invention substantially as claimed including lip seal 18, which engages an enlarged

otions of the valve stem in a wiping manner by applying pressure against the stem (generally below reference number 26 in figure 1) in the open position, but defines a fuel passage when the valve stem is in the closed and fill positions for the purpose of ensuring a correct amount of product is released (see Tsutsui Figs. 1-3).

In regard to claims 14 and 18, the modified invention of Marraffino discloses the invention substantially as claimed including slots (indicated by arrows next to reference number 25 in figure 3), which facilitates fluid communication within an interior of the container 11 for the purpose of filling an aerosol container (see Tsutsui Fig. 3).

7. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marraffino in view of Nikolich (US 4,483,474).

Marraffino discloses the invention substantially as claimed including an aerosol dispenser comprised of housing 10, with an open end and a closure 14, valve stem 20, in operational relationship with the open end, which reciprocates from an open, retracted position to a closed extended position, fuel metering valve 12, located within the housing, fuel metering chamber 28, which allows a pre measured amount of product, with a second container, with an end of the valve body located in the second container (see Figs. 1-4 and C1,L32 – C2,L69). What Marraffino does not disclose is the use of an aerosol container to be used in a combustion powered tool. However, Nikolich teaches that it is old and well known in the art of tool driving to provide a combustion powered toll which is powered by a fuel cell 330, comprised of internal container 333, propellant area 335 and valve stem 332 for the purpose of providing a combustible fuel in aerosol form to a tool. (see Figs. 14,16 and C17,L34-60).

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Marraffino with the combustion tool as taught Nikolich for the purpose of providing a combustible fuel in aerosol form to a tool.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ward, Waldherr, Adalberto, Brunuerie, Yquel, Wilde, Kaeser Green, Kellner, Kopp, Fransen, Liu and Yquel have been cited to show devices having similar structure.

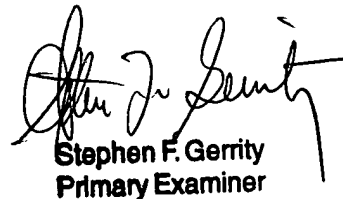
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
June 23, 2005



Stephen F. Gerrity
Primary Examiner

571-272-4460